

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.7290 of 2006

17.04.2006

Between:

V.Parvathalingam

...Petitioner

Vs.

The State rep. by its Government Pleader for Home, High Court, Hyderabad and others.

...Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.7290 OF 2006

ORDER:

The petitioner filed the instant writ petition seeking a writ of Mandamus declaring the action of respondents 3 and 4, namely, Prakash Chakravarthi and Smt.Anuradha in obtaining three gift deeds in favour of fourth respondent by force illegally as null and void and pass appropriate orders. It is the case of the petitioner that apart from the fourth respondent (daughter), he has another daughter - Prasanthi, Wife of Prasad, and son - Anil Kumar, who is married to one Krishna Tulasi. He alleges that the third respondent, who is an advocate, commenced business in the name and style of M/s.Padmavathi Chit Funds and Finance, registered in the name of the petitioner herein and got all documents executed. He also alleges that the third respondent sexually harassed his younger daughter and daughter in law, and by threatening that he would play havoc with marital life of his son and daughter, forced him to execute the gift deed on 23.12.1999 and two more gift deeds on 17.11.2003, that though he has a son and daughter, apart from the fourth respondent, coming under the threatens and influence of the third respondent, he was forced to execute these gift deeds, which are null and void. Therefore, he seeks invalidation of these gift deeds.

The petitioner appeared as party in person and narrated the facts and circumstances leading to filing of the present writ petition. If what the petitioner argued is true, it is no doubt a serious matter, which require further probe. But, having regard to the constraints in exercise of jurisdiction under Article 226 of Constitution of India, a writ petition against private persons would not lie. Secondly,

if any person is aggrieved by the gift deed executed by him as donor, his remedy is to revoke such gift deed in accordance with Section 126 of Transfer of Property Act, 1882 or seek invalidation/cancellation of such gift deed by filing a suit under Section 31 of Specific Relief Act, 1963. Section 31 of Specific Relief Act reads as under.

31. When cancellation may be ordered:- (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908, the Court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

A plain reading of the above would show that any person against whom a written instrument is void or voidable and who has reasonable apprehension that such instrument is left outstanding would cause him serious injury may sue to have such instrument adjudged void or voidable and a civil Court may adjudge it or order it to be cancelled.

In **Valluri Anuradha v Sub Registrar, Saroor Nagar**, I have considered a similar question in the light of Article 226 of Constitution of India and provisions of Registration Act, 1908 and A.P.Registration Rules. The following observations made in the said Judgment are relevant for the purpose of this case.

When a person is aggrieved by registration of a document or for that matter, registration of a cancellation deed, a writ petition under Article 226 of Constitution of India is not a proper remedy. There is no gainsaying that the power of judicial review under Article 226 of Constitution of India does not enable the High Court to redress – in public law; a grievance *de hors* the procedural and/or substantive laws governing the parties before it. There is no denial that the Registration Act, 1908 (for brevity, the Act) is a comprehensive law relating to registration of documents. The term ‘document’ is not defined in the Act. Indian Evidence Act, 1872 (Evidence Act) defines ‘document’ as to mean any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. The illustrations under the definition ‘document’ in Evidence Act further elucidating that (i) a writing is a document; (ii) words printed, lithographed or photographed are documents; (iii) a map or plan is a document; (iv) an inscription on a metal plate or stone is a document; and (v) a caricature is a document. Therefore, anything which records ‘a matter’, be it conveyance or re-conveyance, transfer or re-transfer of a title in the property, is treated as documents. Section 17 of the Act deals with the documents, which require compulsory registration. Instrument of gift of immovable property is one of the compulsorily registerable documents. Any document cancelling a registered document enumerated under Section 17 of the Act also requires registration; as such documents also fall within the description of Section 17(1)(b) of the Act. Be it noted, as per the said

provision, any non-testamentary instrument, which creates a right or extinguishes a right, requires registration. A cancellation deed tends to extinguish the right created by or under a registered document and therefore registration is necessary. This Court is referring this aspect of the matter in the light of the question as to whether a writ petition would lie to nullify a non-testamentary instrument extinguishing the right that allegedly accrued under a gift deed.

Part XI of Registration Act deals with duties and powers of the registering officers. The Act does not confer anywhere the power to enquire into the validity of the document or to refuse registration. When a registering authority refuses to register document, he can only do so by recording reasons. Against any such refusal, an appeal is provided to the Registrar, and therefore, the aggrieved has to approach the civil Court under Section 77 of the Act. That a registering authority cannot refuse registration, is made clear by Rule 58 of A.P.Rules under Registration Act, 1908. The said Rule 58 reads as under.

58. It forms no part of a registering officer's duty to enquire into the validity of a document brought to him for registration or to attend to any written or verbal protest against the registration of a document based on the ground that the executing party had no right to execute the document; but he is bound to consider objections raised on any of the grounds stated below:

- a. that the parties appearing or about to appear before him are not the persons they profess to be;
- b. that the document is forged;
- c. that the person appearing as a representative, assign or agent, has no right to appear in that capacity;
- d. that the executing party is not really dead as alleged by the party applying for registration; or
- e. that the executing party is a minor or an idiot or a lunatic.

A reading of the above Rule would show that a limited power is given to registering officer to enquire into the validity of the document on the ground that the executing party has no right to execute the document. This power would be no more available the moment rightly or wrongly a document presented is registered by registering officer. In such case, the remedy of the aggrieved person whose right is allegedly extinguished by reason of such registered document is to seek appropriate declaration under Section 34 of the Specific Relief Act, 1963 and cancellation of the said document under Section 33 of the said Act. In **Property Association of Baptist Churches v Sub Registrar, Jangoan**, this Court considered similar question and held that a writ petition would not lie.

In view of the above, this writ petition cannot be entertained. If so advised, it shall be open to the petitioner to file appropriate suit/suits before the competent civil Court and obtain decree of cancellation.

The writ petition, with the above observation, is accordingly disposed of. No costs.

(V.V.S.RAO,J)

.04.2006

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